

REMARKS

Claims 19-33 have been canceled and new claims 34-42 submitted.

The newly submitted claims substantially track the previous claims, however, reference to percent identity has been removed, as has reference to proteins comprising fragments of the disclosed sequences. Similarly, language specifying a function for the encoded protein has been removed.

Newly submitted Claim 41 specifies the claimed nucleic acid molecule is a fragment of at least 45 nucleotides from a nucleic acid molecule consisting of one of the disclosed sequences. Support for this claim can be found in the specification, for example, on page 22, lines 21-23, through page 23, lines 1-6. Accordingly, Applicants submit that new matter has been entered in to the Application.

Rejections Under 35 U.S.C. § 112, first paragraph-written description

The Examiner has rejected Claims 19-20, 224-25 and 29-30 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner states that while invention as claimed encompasses any and all allelic variants, homologs and natural and non-natural variants of the disclosed canine H-5 sequences, the specification fails to disclose any variants having the claimed activity. The Examiner contends that at best, the specification discloses the sequences of SEQ ID NO:18 which encodes the amino acid sequences of SEQ ID NO:5 and 10. According to the Examiner, the specification fails to define the minimum structure or consensus core sequence that defines the claimed genus, and instead, defines the claimed variants only by a statement of function. The Examiner therefore concludes that one of skill in the art would conclude Applicants were not in possession of the claimed genus.

Applicants note Claims 19-20, 24-25 and 29-30 have been canceled rendering this rejection moot. The newly submitted claims are drawn only to the disclosed sequences and specific, well-defined fragments of the disclosed sequences. All reference to nucleic acids having a specified percent identity with the disclosed sequences or to nucleic acid molecule comprising fragments of the disclosed sequences has been removed.

Rejections Under 35 U.S.C. §112, first paragraph- enablement

The Examiner has rejected Claims 9-33 under 35 U.S.C. §112, as failing to comply with the enablement requirement. Specifically the Examiner states that while the specification enables one skilled in the art to make or use the nucleic acid sequence of SEQ ID NO's 4, 7 and 9 which encode the amino acid sequences of SEQ ID NO:5 and 10, it does not enable one skilled in the art to make all variants of SEQ ID NO's 4, 7 and 9 having IL-5 activity. The Examiner contends the invention, as claimed, is unpredictable since the specification fails to teach the conserved amino acid sequences required for IL-5 like activity and the claimed variation will encompass conserved motifs germane to IL-5 activity. The Examiner contends that since the number of scenarios increases geometrically with the increase in percent non-identity, one would need to engage in extensive making and testing in order to obtain the variants that meet the requirement of the claims. The Examiner concludes such testing would require one skilled in the art to engage in undue experimentation.

Applicants note Claims 19-33 have been canceled rendering this rejection moot. The newly submitted claims are drawn only to the disclosed sequences and specific, well-defined fragments of the disclosed sequences. All reference to nucleic acids having a specified percent identity with the disclosed sequences or to nucleic acid molecule comprising fragments of the disclosed sequences has been removed.

CONCLUSION

Applicants believe the newly submitted claim set to be in condition for allowance and therefore solicit such from the Examiner. The Examiner is invited to contact the undersigned should any issues remain.

Respectfully submitted,

Dated: July 27, 2005

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